

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

MUNICIPAL COURT DEPARTMENT  
BRIGHTON DIVISION  
1108CR001011

COMMONWEALTH

v.

BRIAN BUBANAS

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**COMMONWEALTH'S OPPOSITION TO DEFENDANT'S MOTION FOR  
A NEW TRIAL**

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The Commonwealth respectfully opposes the defendant's motion for a new trial. On September 9, 2011, the defendant possessed heroin with the intent to distribute it. On June 12, 2012, after a full colloquy, the defendant, represented by competent counsel, acknowledged his guilt in open court. Now claiming that he has newly discovered evidence, he moves for a new trial. As the defendant has failed to sustain his heavy burden of demonstrating that the alleged new evidence rendered his plea unknowing, unintelligent, and involuntary, the Commonwealth respectfully requests that this Court deny the defendant's motion for a new trial.

**I. BACKGROUND**

**A. STATEMENT OF THE CASE**

On September 12, 2011, the clerk's office of the Brighton Division of the Municipal Court Department issued a complaint charging the defendant with possession with the intent to distribute a class (A) substance, in violation of G.L. c. 94C, § 32(a); and a drug violation near a school or park, in violation of G.L. c.

94C, § 32J (R.A. 1). On June 12, 2012, the defendant came before the Honorable Patricia Bernstein (R.A. 3). After a colloquy, at which the defendant was represented by counsel, the defendant changed his plea to guilty (R.A. 3). In consideration of the defendant's change of plea the school zone charge was dismissed at the request of the Commonwealth (R.A. 3). The defendant was sentenced to two years in the house of correction, concurrent with another sentence he was then serving (R.A. 3).

On January 29, 2013, the defendant filed a motion to withdraw his guilty plea, supported by an affidavit of counsel (R.A. 8-12). The defendant's motion essentially raises two claims: 1) "[a]s a result of Ms. Dookhan's conduct, the defendant's plea was not knowing and voluntary, and would therefore be in violation of the Sixth and Fourteenth Amendment and Article 12" (R.A. 8); and 2) "the defendant was deprived of due process by the failure of the Commonwealth to provide true and accurate discovery prior to his plea, in violation of [the] Fourteenth Amendment and Article 14. *Brady v. Maryland*, 373 U.S. 83 (1963)" (R.A. 8). The defendant has not submitted any additional affidavits (R.A. 8-12).

## **B. THE CRIME<sup>1</sup>**

On September 9, 2011, Boston Police Officers executed a search warrant at the defendant's residence at 153 Foster Street (R.A. 14). Officers recovered personal papers in the defendant's name, three round white pills, nine white capsule pills, six plastic bags of heroin, empty plastic bags, \$369.00, and a drug ledger (R.A. 14). The narcotics in the defendant's case were sent to the Hinton Laboratory but were never tested (R.A. 15-20). On August 30, 2012, following an investigation by the Massachusetts State Police, the Hinton Laboratory was closed and one of its employees, Annie Dookhan, was subsequently indicted for alleged misconduct (R.A. 21).

## **II. AS THE DEFENDANT HAS NOT DEMONSTRATED THAT JUSTICE WAS NOT DONE, HIS MOTION TO VACATE HIS PLEA MUST BE DENIED.**

"A defendant may obtain a new trial under Mass. R. Crim. P. 30(b), if it appears that justice may not have been done." *Commonwealth v. DeVincent*, 421 Mass. 64, 67 (1995) (internal quotations omitted); *accord Commonwealth v. Moore*, 408 Mass. 117, 125 (1990). "A motion for a new trial is addressed to the sound discretion of the trial judge." *Commonwealth v. Schand*, 420 Mass. 783,

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<sup>1</sup> The defendant's filings failed to present a statement of the Commonwealth's case. The statement of facts relayed here is derived from the police report filed in connection with the application for complaint (R.A. 13-14). This case commenced with a warrantless arrest. In order for the complaint to issue, the arresting officer provided the clerk-magistrate with his report. *See* District/Municipal Courts R. Crim. P. 2(a). "[T]his [C]ourt, may take judicial notice of the records and files of the court in the same case or in ancillary proceedings . . . ." *Commonwealth v. Kirk*, 39 Mass. App. Ct. 225, 229 n.3 (1995) (citing Liacos, Massachusetts Evidence § 2.8.1 (6th ed. 1994)). Accordingly, the incident reports are part of this case's record.

787 (1995) (internal quotations omitted). “[The] defendant [has] the burden of showing prejudice warranting or requiring a new trial.” *Id.* at 788 n.1.

““In exercising the discretion to hold an evidentiary hearing, the judge must decide whether a substantial issue necessitating a hearing has been raised. In doing so, the judge looks not only to the seriousness of the claim presented, but also at the adequacy of the defendant’s factual showing.”” *Commonwealth v. Shuman*, 445 Mass. 268, 278 (2005) (quoting *Commonwealth v. Trung Chi Truong*, 34 Mass. App. Ct. 668, 674 (1993)). In a motion for new trial, the burden is on the defendant to prove facts that are “neither agreed upon nor apparent on the face of the record.”” *Commonwealth v. Comita*, 441 Mass. 86, 93 (2004) (quoting *Commonwealth v. Bernier*, 359 Mass. 13, 15 (1971)). This Court should decide the issue without further hearing where, as here, no “substantial issue” is raised by the defendant’s motion. *DeVincent*, 421 Mass. at 69; *Commonwealth v. Licata*, 412 Mass. 654, 660 (1992). Indeed, it is the government’s position that this court may either deny the defendant’s motion on the papers, or order an evidentiary hearing; the court may not allow the defendant’s motion absent an evidentiary hearing. *Commonwealth v. Gordon*, 82 Mass. App. Ct. 389, 393-96 (2012).

**A. THE DEFENDANT HAS NOT SHOWN THAT THE ALLEGED NEWLY DISCOVERED EVIDENCE RENDERED HIS PLEA NOT KNOWING, INTELLIGENT, AND VOLUNTARY.**

A guilty plea may be withdrawn only when it does not appear affirmatively on the record that the plea was entered into voluntarily and

intelligently. *Boykin v. Alabama*, 395 U.S. 238, 242-43 (1969); *Commonwealth v. Furr*, 454 Mass. 101, 106 (2009); *Commonwealth v. Lopez*, 426 Mass. 657, 660 (1998); *Commonwealth v. Grant*, 426 Mass. 667, 670 (1998), S.C., 440 Mass. 1001 (2003). New evidence relating to the circumstances surrounding the crime is not relevant to a motion to withdraw a guilty plea. A plea of guilty is an admission of the facts charged and “is itself a conviction. Like a verdict of a jury it is conclusive.” *Kercheval v. United States*, 274 U.S. 220, 223-24 (1927); accord *Commonwealth v. Berrios*, 447 Mass. 701, 715 (2006) (defendant’s admission that he is in fact guilty of the offense precludes challenge to deprivation of rights prior to entry of the plea); *Fanelli*, 412 Mass. at 500 (“a counseled plea of guilty is an admission of factual guilt so reliable that, where voluntary and intelligent, it *quite validly* removes the issue of factual guilt from the case”) (quoting *Commonwealth v. Stokes*, 18 Mass. App. Ct. 637, 641, rev. denied, 393 Mass. 1104 (1984)); *Kuklis v. Commonwealth*, 361 Mass. 302, 305 (1972).

Accordingly, new evidence is relevant to a motion to withdraw a guilty plea only if it sheds light on the defendant’s ability to intelligently and voluntarily plead guilty. See *Commonwealth v. Conaghan*, 433 Mass. 105, 109-11 (2000) (new evidence that the defendant suffered from battered woman’s syndrome was

relevant to the voluntariness of her guilty plea);<sup>2</sup> *cf. Commonwealth v. Duest*, 30 Mass. App. Ct. 623, 627-28 (1990) (rejecting a new evidence claim in a motion to withdraw a guilty plea where the evidence was not newly discovered, but merely newly recollected), *rev. denied*, 410 Mass. 1103 (1991). As such, assuming that a plea is constitutionally proper, the defendant's admission that he committed the crimes charged against him is conclusive proof of guilt that outweighs any countervailing evidence.

Here, the defendant pled guilty and, in so doing, admitted in open court that he committed the charged offenses (R.A. 3). He had an opportunity to contest the facts presented by the Commonwealth during the plea or to exercise his right to trial, but chose neither option (R.A. 3). As such, he waived his right to challenge the factual basis of his plea. *See Fanelli*, 412 Mass. at 500 (“A defendant’s guilty plea, made knowingly, voluntarily and with the benefit of competent counsel, waives all nonjurisdictional defects in the proceedings prior to the entry of the guilty plea.”) (citing *Lefkowitz v. Newsome*, 420 U.S. 283, 288 (1975) (“a guilty plea, intelligently and voluntarily made, bars the later assertion of constitutional challenges to the pretrial proceedings”)). The defendant’s vague and general assertion that there is new evidence about the laboratory relates only to the circumstances surrounding the offense and his factual guilt, but has no

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<sup>2</sup> In *Conaghan*, 433 Mass. at 110, the SJC remanded the case because the defendant’s motion for a competency examination “raise[d] a serious question as to her mental competency to assist her attorney in establishing a defense and to plead guilty voluntarily.” The new evidence described in *Conaghan* went only to the voluntariness of the plea and her ability to assist in her defense and not the issue of factual guilt.

bearing at all on the intelligence or volition of his plea, therefore his claim is irrelevant and cannot be the basis for vacating his guilty plea.<sup>3</sup>

Here, the newly discovered evidence is not relevant to the voluntary nature of the defendant's guilty plea.<sup>4</sup> A "plea is voluntary if entered without coercion, duress, or improper inducements." *Berrios*, 447 Mass. at 708 (citing *Brady v. United States*, 397 U.S. 742, 750, 755 (1970); *Duest*, 30 Mass. App. Ct. at 631). The defendant does not claim that his plea was the result of coercion, threats, or improper inducements (R.A. 8-12). Instead, the defendant essentially claims, at best indirectly through an affidavit of counsel (R.A. 10-11), that he pled guilty because of his perception of the strength of the Commonwealth's case against him and, inferentially, the opportunity for leniency in sentencing (R.A. 10-11). "[T]hat the defendant felt that he had no choice but to plead guilty does not provide a proper basis to invalidate the plea[.]" *Berrios*, 447 Mass. at 709 (citing *Commonwealth v. Quinones*, 414 Mass. 423, 436 (1993); *Commonwealth v. Morrow*, 363 Mass. 601, 606-07 (1973)). "[T]he stress inherent in entering guilty pleas . . . do[es] not necessarily render pleas involuntary." *Berrios*, 447 Mass. at 709. "[A] certain amount of psychological or emotional pressure (or coercion, if

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<sup>3</sup> The irrelevance here is particularly striking where the defendant's drugs were never, in fact, tested at all. It is difficult to understand how evidence about the lab could have any bearing on the defendant's case when the lab itself never conducted any testing.

<sup>4</sup> A defendant tenders a plea "intelligently" if he has knowledge of the elements of the charges against him and of the procedural protections that he would forgo by pleading guilty. *Commonwealth v. Robbins*, 431 Mass. 442, 449-50 (2000); *Commonwealth v. Correa*, 43 Mass. App. Ct. 714, 717 (1997). The defendant makes no claim that his plea was not intelligently made.

you will) ‘is endemic to any system which asks a person to forgo certain rights in order to be spared certain penalties.’” *Commonwealth v. Bowen*, 63 Mass. App. Ct. 579, 584 (2005) (quoting *Commonwealth v. Damiano*, 14 Mass. App. Ct. 615, 619 (1982)). Indeed, the defendant fails to even so much as allege that he felt compelled to plea based on his perception of the strength of the case against him (R.A. 8-12). Nonetheless, if the defendant was motivated in part to plea based on his perception of the Commonwealth’s case against him, that fact does not render his otherwise voluntary plea to be involuntary. *See Berrios*, 447 Mass. at 708-09 (“the concern of possibly receiving a harsher sentence if a defendant is tried and found guilty, and pressure from family members and from counsel, do not necessarily render pleas involuntary”); *Quinones*, 414 Mass. at 436 (whatever pressure or discouragement the defendant may have felt because of the denial of his motion for the appointment of new counsel, it may not be the basis of a finding of an absence of voluntariness); *Morrow*, 363 Mass. at 606-07 (guilty plea not invalid whenever motivated by the defendant’s desire to accept the certainty of a lesser penalty due to a plea bargain rather than face a wider range of possibilities as a result of trial).

Moreover, in considering the voluntary nature of the defendant’s plea, it is significant that, in contemplation of the plea agreement, the defendant received the benefit of dismissal of the school zone charge and a concurrent sentence with another sentence he was then serving (R.A. 3). Despite facing the possibility of a a five year house of correction sentence consecutive to the sentence he was then



serving, his sentence was limited to no more than two years in the house of correction, much of that time he would have served regardless., a fraction of his total possible exposure (R.A. 3). *See Furr*, 454 Mass. at 112 (“the highly generous sentence recommendation that the defendant received in light of the offenses with which he was charged strongly supports the conclusion that the defendant chose voluntarily to plead to those offenses”); *Commonwealth v. DeCologero*, 49 Mass. App. Ct. 93, 94 (2000) (“voluntariness may be inferred from the extensive discussions at the plea hearing regarding the favorable sentencing consequences which the defendant would receive”). Given the generous disposition that he received, it is difficult to discern how his decision to agree to the plea was not made voluntarily.

The defendant need not have a full understanding of the trial evidence and any possible attacks on the credibility of the witnesses against him for a plea to be intelligent and voluntary. *See Brady*, 397 U.S. at 757 (a “defendant is not entitled to withdraw his plea merely because he discovers long after the plea has been accepted that his calculus misapprehended the quality of the State’s case”); *see also Commonwealth v. Russin*, 420 Mass. 309, 317-18 (1995) (“[i]n establishing that a guilty plea is offered intelligently and voluntarily by the defendant, the judge must ensure that the plea has been made with an understanding of the nature of the charge and the consequences of the plea”) (quoting *Morrow*, 363 Mass. at 605). Even if such an understanding was required, the defendant’s meager

submission once again fails to rise to the level where this court could even infer the defendant had such a misunderstanding (R.A. 8-12).

To be sure, the defendant's failure to understand the strength of the case against him could be significant if it resulted from ineffective assistance of counsel—a claim that the defendant has not raised. *See Commonwealth v. Walker*, 443 Mass. 867, 871, *cert. denied*, 546 U.S. 1021 (2005); *Commonwealth v. Ortiz-Peguero*, 51 Mass. App. Ct. 90, 95-8 (2001). In the absence of ineffective assistance of his own counsel, however, a defendant's ignorance of a possible challenge to the credibility of a government witness is not relevant. *See Berrios*, 447 Mass. at 706, 710 (credibility problems on the part of government witnesses "relate to the weight of the evidence and are properly left to the fact finder for resolution"); *see also id.* at 710 (the Court did not see "how this potential problem for the Commonwealth has any bearing on the voluntariness of the defendant's pleas"). Hence, possible attacks on the witness' credibility have no bearing on the validity of the defendant's guilty plea—particularly so where the lack of a drug analysis meant that there were no witnesses to impeach. Even if the court considered the merits of the "newly discovered evidence" it would still not avail the defendant. Even in the context of a post-conviction attack following a trial, in which the defendant did indeed contest his guilt, newly discovered evidence that tends merely to impeach testimony of witnesses does not ordinarily warrant a new trial. *See Commonwealth v. Simmons*, 417 Mass. 60 (1994) (newly discovered impeachment evidence that cooperating co-defendant

earlier stated defendant was not with him at the time of murder insufficient to warrant a new trial).

Moreover, any reliance the defendant may place on *Ferrara v. United States*, 456 F.3d 278 (1<sup>st</sup> Cir. 2006), is similarly unavailing. *Ferrara* stands for the proposition that to set aside a plea as involuntary in circumstances like the ones alleged here the defendant must “[f]irst show that some egregiously impermissible conduct . . . antedated the entry of his plea . . . [and] [s]econd, he must show that the misconduct influenced his decision to plead guilty<sup>5</sup> or, put another way, that it was material to that choice.” *Id.* at 290. The facts at work in *Ferrara*, juxtaposed against those in the instant case reveal the fundamental defect in the defendant’s claim. In *Ferrara* the prosecutor “manipulated the [primary government] witness into reverting back to his original version of events, then effectively represented to the court and the defense that the witness was going to confirm the story (now known by the prosecution to be a manipulated tale) that the petitioner was responsible for killing [the victim].” *Id.* at 291. Thus, there was egregious misconduct in *the defendant’s case*. Indeed, as has been the

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<sup>5</sup> Relative to the second prong in *Ferrara* the court found no defect in the defendant’s failure to submit an affidavit alleging that the misrepresentation was material. *Ferrara*, 456 F.3d 295. However, 28 U.S.C. § 2255 permits a petitioner to forgo an affidavit and sign the petition under the pains of penalties of perjury, and even the failure to do so is not fatal to the defendant’s claim. *See e.g., Hendricks v. Vasquez*, 908 F.2d 490, 491 (9<sup>th</sup> Cir. 1990). Mass. R. Crim. P. 30(b) has no analogous provision which permits the court to dispense with the requirement that the defendant at least plead that, but for the misconduct, the defendant would not have pled guilty. The defendant here has failed to even so much as allege that any misconduct which may have occurred would have been material to his choice to plea (R.A. 13-16). *See Ferrara*, 456 F.3d 290 (defendant must show misconduct influenced decision to plead guilty)

Commonwealth's position since the allegations of misconduct at the Hinton Laboratory came to its attention, where there is a showing that there was egregious misconduct *in the defendant's case* the conviction should be vacated.<sup>6</sup> However, here there has been no showing of misconduct. Rather, there is a showing that one of the individuals who might, at some point in the future, have participated in the analysis is believed to have engaged in some unspecified misconduct in *some cases* (R.A. 21). Although even presumption presents a factual impossibility as the defendant's drugs had still not been tested after Ms. Dookhan's termination.

The logic the defendant seeks to apply would, in the context of the misconduct in *Ferrara*, require the federal courts, at a minimum, to vacate every other conviction of every other defendant in the history of the United States Attorney's Office where the prosecutor in *Ferrara* was part of the prosecution team—a result which even the defendant would no doubt concede is absurd. In short, without a showing of egregious misconduct *in the defendant's case* the defendant's conviction must stand.

Importantly, this absurdity has already been rejected by both the Appeals Court and the Supreme Judicial Court. In *Commonwealth v. Campiti*, 41 Mass.

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<sup>6</sup> As part of the Attorney General's investigation into the allegations of misconduct at the Hinton Laboratory, a review of laboratory documentation between January 2010 and June 2011 revealed only three Suffolk County cases where the outcomes of testing were manipulated. See *Commonwealth v. Miguel Vasquez* 1006CR002969; *Commonwealth v. Paul Flannelly* 1001CR006852; *Commonwealth v. Stephen Goudreau* 1003CR001344. Following that discovery, the Commonwealth immediately moved to vacate these convictions and entered nolle prosequis.

App. Ct. 43 (1996), one of the State Police Troopers involved in the defendant's case was later convicted of embezzling money seized in narcotics cases. *Id.* at 65. The court concluded that it was appropriate to reject Campiti's claims where he had demonstrated "only that [the Trooper] acted in a separate, distinct and unconnected way committing an unlawful act that had no connection with his law enforcement activities." *Id.*; *See also Commonwealth v. Ellis*, 432 Mass. 746, 765 (2000) (rejecting defendant's claim relative to police misconduct where defendant failed to make a showing that "detectives procured false evidence in connection with the investigation of this defendant"). The thread which inextricably links *Ferrara*, *Campiti*, and *Ellis* is the requirement that the defendant make a showing of misconduct in his case—a burden which the defendant in the instant case has failed to sustain.

Notably, the defendant failed to submit his own affidavit that even so much as alleges that his plea was not knowing, intelligent and voluntary, and that he would not have pled guilty had he been aware of the alleged misconduct at the Hinton Laboratory (R.A. 8-12). Here this court may draw, by analogy, from the case law relative to claims of ineffective assistance of counsel. In the context of a guilty plea, in order to satisfy the "prejudice" requirement, the defendant must establish that "there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." *See Commonwealth v. Clarke*, 460 Mass. 30, 47 (2011) (quoting *Hill v. Lockhart*, 474 U.S. 52, 59 (1985)). "At a minimum, this means that the defendant must aver that

to be the case.” *Id.* (citing *Hill*, 474 U.S. at 60). “In addition, he must ‘convince the court that a decision to reject the plea bargain would have been rational under the circumstances.’” *Id.* (citing *Padilla v. Kentucky*, 130 S. Ct. 1473, 1485 (2010)). This court is entitled to consider this omission when reviewing the adequacy of the defendant’s showing. *See Commonwealth v. Goodreau*, 442 Mass. 341, 354 (2004) (citation omitted) (“When weighing the adequacy of the materials submitted in support of a motion for a new trial, the judge may take into account the suspicious failure to provide pertinent information from an expected and available source.”). In the absence of even so much as a self-serving averment to the contrary, all this court has left to consider is the defendant’s solemn admission of his guilt, under oath and after a full colloquy (R.A. 3), and his written waiver of rights (R.A. 6-7). The defendant’s scant showing amounts to nothing more than unsworn and unsupported statements in the body of the motion (R.A. 8-12), and a hearsay riddled affidavit of counsel which alleges nothing more than the existence of an investigation into alleged misconduct at the Hinton Laboratory (R.A. 10-11). Such a showing cannot be said to raise a substantial issue, and his meritless claim must be denied without a hearing.

**B. THE DEFENDANT WAIVED HIS CLAIM THAT THE COMMONWEALTH FAILED TO PROVIDE “TRUE AND ACCURATE” DISCOVERY IN VIOLATION OF *BRADY V. MARYLAND* WHEN HE TENDERED HIS PLEA OF GUILTY; THE COMMONWEALTH IS UNDER NO OBLIGATION TO PROVIDE IMPEACHMENT EVIDENCE PRIOR TO A DEFENDANT’S CHANGE OF PLEA; AND, IN ANY EVENT, THE COMMONWEALTH DID NOT SUPPRESS EXCULPATORY EVIDENCE.**

The defendant lastly claims, without citation to authority or the record that “the defendant was deprived of due process by the failure of the Commonwealth to provide true and accurate discovery prior to her plea, in violation of [the] Fourteenth Amendment and Article 14. *Brady v. Maryland*, 373 U.S. 83 (1963)” (R.A. 8). As the defendant waived his right to receive exculpatory evidence by his tender of plea and as the Commonwealth did not suppress exculpatory evidence, the defendant’s meritless claim must fail.

***i. The Defendant Waived His Claim That The Commonwealth Did Not Provide “True And Accurate” Discovery When He Tendered His Plea Of Guilty.***

The defendant’s claim misapprehends the state of the law relative to motions to vacate guilty pleas. “When a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea.” *Tollett v. Henderson*, 411 U.S. 258, 267 (1973). In short, “a guilty plea represents a break in the chain of events which has preceded it in the criminal process.” *Id*; *see also Brady v. United States*, 397 U.S. 742 (1970) (plea, encouraged by fear of possible death sentence which was later ruled unconstitutional, was voluntary,

knowing and intelligent); *McMann v. Richardson*, 397 U.S. 759 (1970) (plea based upon competent advice of counsel was an intelligent plea not open to collateral attack on the basis that counsel may have misjudged the admissibility of confession); *Parker v. North Carolina*, 397 U.S. 790 (plea tendered to avoid unconstitutional imposition of death penalty, and involuntary confession nonetheless intelligent and knowing).

Here, the defendant's plea of "guilty by its terms waive[d] all non-jurisdictional defects." *Commonwealth v. Cabrera*, 449 Mass. 825, 830 (2007), citing *Garvin v. Commonwealth*, 351 Mass. 661, 663-64, appeal dismissed, *cert. denied*, 389 U.S. 13, (1967) (even illegally obtained confession cannot be basis for collateral attack on conviction based on voluntary and intelligent guilty plea); see also *United States v. Stevens*, 487 F.3d 232, 238-40 (5th Cir.), *cert. denied*, 552 U.S. 936 (2007) (where defendant entered unconditional guilty plea, court would not revisit suppression issues); *United States v. Doyle*, 348 F.2d 715, 718 (2d Cir.), *cert. denied*, 382 U.S. 843 (1965) (guilty plea waives claim of speedy trial violation).

Importantly, the defendant has failed to make a showing or even an unsupported allegation that the Commonwealth did, in fact, fail to provide true and accurate discovery—especially there was no drug analysis provided at all, be it true or false (R.A. 8-12, 15-20). The absence here is notable as the entirety of the defendant's claim rests upon the *a priori* presumption that the Commonwealth



failed to provide “true and accurate” discovery. Accordingly, the defendant’s claim is without any factual basis at all.

The defendant’s reliance on *Napue v. Illinois*, 360 U.S. 264 (1959), is similarly misplaced. In *Napue*, the prosecutor failed to correct the false trial testimony of the principle witness against the defendant despite knowing the testimony to be false. *Id.* at 265. The facts of the instant case can easily be distinguished from those in *Napue*. Here, there was never any false testimony nor was a drug analysis ever provided; rather, the drugs were simply housed, for a time, at a facility where one of its employees was later alleged to engage in misconduct—without even so much as an analysis having been provided, it would create a factual impossibility that it is “false”, indeed the defendant does not even allege that the substances at issue were non-narcotic (R.A. 8-12). Secondly, there has been absolutely no showing either by an allegation through affidavit or in any of the media reports referenced by counsel that, at the time of the defendant’s change of plea, the Commonwealth had any knowledge or awareness of Ms. Dookhan’s alleged misconduct.

Assuming *arguendo*, that the Commonwealth failed to provide discovery which it neither had nor could have obtained; or that the Commonwealth’s provision, pre-trial, of an analysis performed by an individual who, unbeknownst to the Commonwealth, would later be the subject of allegations of misconduct, could be a violation of the defendant’s due process rights under *Brady*, the

defendant's intervening plea renders alleged *Brady* violations moot. The defendant's claim must necessarily fail.

***ii. The Commonwealth Is Under No Obligation To Disclose Impeachment Evidence Prior To A Defendant's Change Of Plea.***

Regardless of whether or not the Defendant waived his claim by tendering a plea of guilty, the Commonwealth was under no obligation to disclose impeachment evidence prior to the defendant's change of plea. Although it is undisputed that "the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution", *Brady v. Maryland*, 373 U.S. at 87, the government is under no obligation to disclose material impeachment evidence prior to entering into a plea agreement. *United States v. Ruiz*, 536 U.S. 622, 629 (2002). "Impeachment information is special in relation to the *fairness of a trial*, not in respect to whether a plea is *voluntary*." *Id.* (emphasis in original). The Constitution does not place upon the government the obligation to share all useful information with the defendant. *Weatherford v. Bursey*, 429 U.S. 545, 559 (1977). The Court in *Ruiz*, relying on the *Brady* trilogy and its progeny found that

. . . the Constitution, in respect to a defendant's awareness of relevant circumstances, does not require complete knowledge of the relevant circumstances, but permits a court to accept a guilty plea, with its accompanying waiver of various constitutional rights, despite various forms of misapprehension under which a defendant might labor. See *Brady v. United States*, 397 U.S. at 757 (defendant "misapprehended the quality of the State's case"); *id.* (defendant misapprehended "the likely

penalties"); *id.* (defendant failed to "anticipate a change in the law regarding" relevant "punishments"); *McMann v. Richardson*, 397 U.S. 759, 770 (1970) (counsel "misjudged the admissibility" of a "confession"); *United States v. Broce*, 488 U.S. 563, 573 (1989) (counsel failed to point out a potential defense); *Tollett v. Henderson*, 411 U.S. 258, 267 (1973) (counsel failed to find a potential constitutional infirmity in grand jury proceedings). It is difficult to distinguish, in terms of importance, (1) a defendant's ignorance of grounds for impeachment of potential witnesses at a possible future trial from (2) the varying forms of ignorance at issue in these cases.

*Id.* at 630. The evidenced described by the defendant falls squarely within the bounds of impeachment evidence and the Commonwealth is therefore under no obligation to disclose it prior to a defendant's change of plea.

Black's Law Dictionary defines impeachment as "[e]vidence used to undermine a witness's credibility. Fed. R. Evid. §§ 607-10." *Black's Law Dictionary*, 8<sup>th</sup> ed., 597. The analog to the Federal Rules can be found in the Massachusetts Guide to Evidence §§ 607-10. A party seeking to offer impeachment evidence may do so by contradicting the witness' testimony, challenging the witness' testimonial faculties, demonstrating the witness' bias, prejudice, or motive to lie, and showing that the witness has a bad character for truthfulness and veracity. *Handbook of Massachusetts Evidence*, 7<sup>th</sup> ed., Liacos & Brodin, 269. The newly discovered evidence described in general and vague terms by the defendant, if admissible at all, would be used solely to test "the purity of principle, [and] the skill, accuracy, and judgment of the witness." *Hathaway v. Crocker*, 48 Mass. 262, 266 (1843).

Accordingly, where the evidence at issue here is impeachment evidence, and the Commonwealth is under no obligation to provide it prior to the defendant's change of plea, the Commonwealth did not fail to satisfy its discovery obligations and the defendant's claim must fail.

***iii. The Commonwealth Did Not Suppress Exculpatory Evidence.***

Lastly, there is no merit to the defendant's contention that the Commonwealth improperly suppressed exculpatory evidence. In *Brady* the United States Supreme Court held "that the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." *Brady*, 373 U.S. at 87. Since then, the Court has expanded the holding of *Brady* to create a duty to disclose exculpatory evidence, including impeachment evidence, even though there has been no request by the defendant. *United States v. Bagley*, 473 U.S. 667, 676 (1985); *United States v. Agurs*, 427 U.S. 97, 107 (1976).

"A prosecutor's duty [to disclose exculpatory evidence] extends only to exculpatory evidence in the prosecutor's possession or in the possession of the police who participated in the investigation and presentation of the case." *Commonwealth v. Tucceri*, 412 Mass 401, 407 (1992). Members of the prosecution team to whom the duty extends includes "members of [the prosecutor's] staff and . . . any others who have participated in the investigation or evaluation of the case and who either regularly report or with reference to the

particular case have reported to [the prosecutor's] office." *Commonwealth v. Daye*, 411 Mass. 719, 734 (1992). However, a "prosecutor cannot be said to suppress that which is not in his possession or subject to his control," *Commonwealth v. Donahue*, 396 Mass. 590, 596 (1986), and thus "[o]rdinarily the prosecutor's obligation to disclose information is limited to that in the possession of the prosecutor or police." *Commonwealth v. Liebman*, 379 Mass. 671, 675 (1980).

In this case, at the time of the defendant's plea, the impeachment information, which was not revealed until after the defendant's plea, was contained within the mind of Ms. Dookhan and could not have been subject to compelled production by the government. *See Miranda v. Arizona*, 384 U.S. 436 (1963). Furthermore, in *Commonwealth v. Waters*, 410 Mass. 224 (1991), a case in which the officers were alleged to have perjured themselves in an effort to conceal an extortion scheme, the Supreme Judicial Court refused "to attribute to the prosecution the conduct of police officers in pursuit of their own individual unlawful scheme unrelated to the Commonwealth's interest in law enforcement." *Id.* at 230.

Accordingly, because the evidence was not in the care, custody, or control of the prosecutor or his prosecution team, the government's failure to disclose that which it did not know existed, nor could have reasonably discovered, cannot be a failure to comply with its obligations under both *Brady* and Mass. R. Crim. P. 14(a)(1)(A)(iii) and the defendant's claim must fail.

### **III. CONCLUSION.**

For the foregoing reasons, the Commonwealth respectfully requests that this Court deny the defendant's motion to withdraw his guilty plea.

Respectfully submitted  
FOR THE COMMONWEALTH,

DANIEL F. CONLEY  
District Attorney  
For the Suffolk District

Vincent J. DeMore  
Assistant District Attorney  
BBO# 671136  
One Bulfinch Place  
Boston, MA 02114  
(617) 619-4000

April 22, 2013

## COMMONWEALTH'S RECORD APPENDIX

Criminal Complaint 1108CR001011 .....	R.A.	1
Criminal Docket 1108CR001011 .....	R.A.	2-5
Tender of Plea or Admission & Waiver of Rights.....	R.A.	6-7
Defendant's Motion to Withdraw Guilty Plea and Supporting Affidavit .....	R.A.	8-12
Boston Police Incident Report .....	R.A.	13-14
Drug Analysis Documentation.....	R.A.	15-20
CD-ROM of the Allegations and Evidence Derived from the Attorney General's Investigation Containing: .....	R.A.	21
<ol style="list-style-type: none"><li>1. April 20, 2012 Correspondence from Linda Han to District Attorney Daniel F. Conley (1 page);</li><li>2. September 29, 2004, Policies and Procedures Drug Analysis Laboratories (24 pages);</li><li>3. February 1, 2012 Correspondence from Linda Han to District Attorney Michael W. Morrissey (3 pages);</li><li>4. February 21, 2012 Correspondence from Linda Han to District Attorney Michael W. Morrissey (3 pages);</li><li>5. September 20, 2012 Correspondence from AAG Edward R. Bedrosian, Jr. to District Attorney Joseph Early, Jr. and Attorney Anthony Benedetti (2 pages);</li><li>6. Bates Stamped 101 Page Discovery Packet, produced by the Office of the Attorney General September 17, 2012;</li><li>7. Bates Stamped 446 Page Discovery Packet, produced by the Department of Public Health November 13, 2012.</li><li>8. Bates Stamped 5 Page Discovery Packet, produced by the Office of the Attorney General November 21, 2012, containing:<ol style="list-style-type: none"><li>a. October 15, 2012 Memorandum of Interview authored by Detective Captain Joseph V. Mason, Jr. (Bates stamped pages 1-2); and</li></ol></li></ol>		

- b. Probable Cause Statements authored by Detective Lieutenant Robert M. Irwin (Bates stamped pages 3-5).
9. Bates Stamped 31 Page Discovery Packet, produced by the Office of the Attorney General December 17, 2012;
  10. Bates Stamped 16 page Discovery Packet, Produced by the Office of the Attorney General December 21, 2012;
  11. Bates Stamped 13 page Discovery Packet, Produced by the Office of the Attorney General on January 17, 2013;
  12. 3,398 E-mails and Attachments, Produced by the Department of Public Health on December 11, 2012;
  13. Bates Stamped 3 Page February 12, 2013 Correspondence from AAG John Verner to District Attorney Daniel Conley;
  14. Bates Stamped 210 Page Packet of Grand Jury Minutes in the Matter of *Commonwealth v. Annie Dookhan* SUCR2012-11155 et seq;
  15. Bates Stamped 992 Page Packet of Grand Jury Exhibits in the Matter of *Commonwealth v. Annie Dookhan* SUCR2012-11155 et seq;
  16. Bates Stamped 3 Page Order of Judge Frances McIntyre Permitting the Attorney General's Office to Disseminate Grand Jury Materials;
  17. Bates Stamped 3 Page Order of Judge Frances McIntyre Permitting the District Attorneys and United States Attorney for the District of Massachusetts to Disseminate Grand Jury Materials; and
  18. Bates Stamped 4 Page Massachusetts State Police Report re: November 30, 2012 investigation at Hinton Lab with Attachment #1 (4 pages).



CERTIFICATE OF SERVICE

I hereby certify, under the pains and penalties of perjury, that I have today made service on the defendant's attorney of record by directing that a copy of this memorandum be delivered in hand:

Attorney Dmitry Lev  
419 Mount Auburn St.  
Watertown, MA 02472

Vincent J. DeMore  
Assistant District Attorney

April 22, 2013

<b>CRIMINAL COMPLAINT</b> ORIGINAL		DOCKET NUMBER <b>1108CR001011</b>	NO. OF COUNTS <b>2</b>	<b>Trial Court of Massachusetts BMC Department</b>
DEFENDANT NAME & ADDRESS Brian M Bubanas 153 Foster St. Brighton, MA 02135				COURT NAME & ADDRESS BMC Brighton 52 Academy Hill Road Brighton, MA 02135 (617)782-6521
DEFENDANT DOB 02/13/1985	COMPLAINT ISSUED 09/12/2011	DATE OF OFFENSE 09/09/2011	ARREST DATE 09/09/2011	
OFFENSE CITY / TOWN Boston	OFFENSE ADDRESS 153 Foster Street			NEXT EVENT DATE & TIME 09/12/2011 10:00 AM
POLICE DEPARTMENT Boston PD - Area D-14	POLICE INCIDENT NUMBER 110488606			NEXT SCHEDULED EVENT Arraignment
OBTN				ROOM / SESSION First Session

The undersigned complainant, on behalf of the Commonwealth, on oath complains that on the date(s) indicated below the defendant committed the offense(s) listed below and on any attached pages.

COUNT	CODE	DESCRIPTION
1	94C/32/C	DRUG, POSSESS TO DISTRIB CLASS A c94C §32(a)

On 09/09/2011, not being authorized by law, did knowingly or intentionally possess with intent to manufacture, distribute or dispense a controlled substance in Class A of G.L. c.94C, §31, to wit: Heroin, in violation of G.L. c.94C, §32(a).

PENALTY: state prison for not more than 10 years; or jail or house of correction for not more than 2½ years; or not less than \$1000, not more than \$10,000; or both; G.L. c.280, §6B; plus Drug Analysis Fee of not less than \$150, not more than \$500, with maximum fee of \$500 for multiple offenses from single incident. District Court has final jurisdiction under G.L. c.218, §26.

2	94C/32J	DRUG VIOLATION NEAR SCHOOL/PARK c94C §32J
---	---------	---

On 09/09/2011 did, as charged in the accompanying count(s), violate the provisions of G.L. c.94C, §§32, 32A, 32B, 32C, 32D, 32E, 32F or 32I while in or on, or within 1000 feet of the real property comprising a public or private accredited preschool, accredited headstart facility, or elementary, vocational or secondary school, or within 100 feet of a public park or playground, in violation of G.L. c.94C, §32J.


(ADDITIONAL PENALTY FROM AND AFTER SENTENCE FOR VIOLATION OF §32, 32A, 32B, 32C, 32D, 32E, 32F or 32I: state prison not less than 2 1/2 years, not more than 15 years; or jail or house of correction not less than a mandatory minimum of 2 years, not more than 2 1/2 years; and optional fine not less than \$1000, not more than \$10,000. §32H: may not be filed or continued without a finding; no reduction or suspension of sentence until 2 years served. District Court has final jurisdiction under G.L. c.218, §26.)

A true copy. Blum

James H. Clerk

SIGNATURE OF COMPLAINANT <i>Maureen Parker</i>	SWORN TO BEFORE CLERK-MAGISTRATE/ASST. CLERK/DEP. ASST. CLERK <i>X</i>	DATE 9/12/11
NAME OF COMPLAINANT	A TRUE COPY ATTEST <i>X</i>	DATE

**Notice to Defendant:** 42 U.S.C. § 3796gg-4(e) requires this notice: If you are convicted of a misdemeanor crime of domestic violence you may be prohibited permanently from purchasing and/or possessing a firearm and/or ammunition pursuant to 18 U.S.C. § 922 (g) (9) and other applicable related Federal, State, or local laws.

<b>CRIMINAL DOCKET</b>		DOCKET NUMBER <b>1108CR001011</b>		NO. OF COUNTS <b>2</b>		<b>Trial Court of Massachusetts BMC Department</b>				
DEFENDANT NAME AND ADDRESS <b>Brian M Bubanas 153 Foster St. Brighton, MA 02135</b>			DOB <b>02/13/1985</b>		GENDER <b>Male</b>		COURT NAME & ADDRESS <b>BMC Brighton 52 Academy Hill Road Brighton, MA 02135</b>			
			DATE COMPLAINT ISSUED <b>09/12/2011</b>							
			PRECOMPLAINT ARREST DATE <b>09/09/2011</b>		INTERPRETER REQUIRED					
FIRST FIVE OFFENSE COUNTS										
COUNT	CODE	OFFENSE DESCRIPTION						OFFENSE DATE		
1	94C/32/C	DRUG, POSSESS TO DISTRIB CLASS A c94C §32(a)						09/09/2011		
2	94C/32J	DRUG VIOLATION NEAR SCHOOL/PARK c94C §32J						09/09/2011		
DEFENSE ATTORNEY <i>Solomon / Leverson</i>			OFFENSE CITY/TOWN <b>Boston</b>			POLICE DEPARTMENT <b>Boston PD - Area D-14</b>				
DATE & JUDGE		DOCKET ENTRY				DATE & JUDGE		FEES IMPOSED		
9/12/11 Dennis H.		<input type="checkbox"/> Attorney appointed (SJC R. 3:10) <input type="checkbox"/> Atty denied & Deft. Advised per 211 D §2A <input type="checkbox"/> Waiver of Counsel found after colloquy  Terms of release set: <input type="checkbox"/> PR <input checked="" type="checkbox"/> Bail <i>4,011</i> <input type="checkbox"/> See Docket for special condition <input type="checkbox"/> Held (278 §58A)						Counsel Fee (211D § 2A(2)) <input type="checkbox"/> WAIVED		
								Counsel Contribution (211D § 2) <input type="checkbox"/> WAIVED		
								Default Warrant Fee (276 § 30(1)) <input type="checkbox"/> WAIVED		
								Default Warrant Arrest Fee (276 § 30(2)) <input type="checkbox"/> WAIVED		
6-12-12 Berastan		Arraigned and advised: <input checked="" type="checkbox"/> Potential of bail revocation (276 §58) <input type="checkbox"/> Right to bail to review (276 §58) <input type="checkbox"/> Right to drug exam (111E § 10)						Probation Supervision Fee (276 § 87A) <input type="checkbox"/> WAIVED		
								Bail Order Forfeited		
								Advised of right to jury trial <input checked="" type="checkbox"/> Waiver of jury found after colloquy <input type="checkbox"/> Does not waive		
		Advised of trial rights as pro se (Dist. Ct. Supp.R.4)								
		Advised of right of appeal to Appeals Ct. (M.R. Crim P.R. 28)								
SCHEDULING HISTORY										
NO.	SCHEDULED DATE	EVENT	RESULT				JUDGE	TAPE START/STOP		
1	09/12/2011	Arraignment	<input type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input type="checkbox"/> Cont'd <i>10/6/11</i>				<i>PTH</i>			
2	<i>10/6/11</i>	<i>PTH</i>	<input type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input type="checkbox"/> Cont'd <i>11/18/11</i>				<i>McKenra</i>	<i>10:51</i>		
3	<i>1-9-12</i>	<i>C+E</i>	<input type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input type="checkbox"/> Cont'd <i>11/18/11</i>				<i>PTH</i>	<i>11:01</i>		
4	<i>2/14/12</i>	<i>m/s</i>	<input type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input type="checkbox"/> Cont'd							
5	<i>1-30-12</i>		<input type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input type="checkbox"/> Cont'd <i>WAR</i>				<i>Dennelly</i>			
6			<input type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input type="checkbox"/> Cont'd <i>no bail</i>							
7	<i>2-14-12</i>		<input type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input type="checkbox"/> Cont'd <i>3-12-12</i>				<i>Dennelly</i>			
8	<i>4/2/12</i>	<i>PTH</i>	<input type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input type="checkbox"/> Cont'd <i>sp/ov</i>							
9	<i>6-12-12</i>	<i>Plu</i>	<input type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input type="checkbox"/> Cont'd				<i>Berastan</i>	<i>1037-20</i>		
10		<i>Pl</i>	<input type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input type="checkbox"/> Cont'd							
APPROVED ABBREVIATIONS ARR = Arraignment PTH = Pretrial hearing DCE = Discovery compliance & jury selection BTR = Bench trial JTR = Jury trial PCH = Probable cause hearing MOT = Motion hearing SRE = Status review SRP = Status review of payments FAT = First appearance in jury session SEN = Sentencing CWF = Continuance-without-finding scheduled to terminate PRO = Probation scheduled to terminate DFTA = Defendant failed to appear & was defaulted WAR = Warrant Issued WARD = Default warrant issued WR = Warrant or default warrant recalled PVH = probation revocation hearing.										
A TRUE COPY ATTEST:		CLERK-MAGISTRATE / ASST CLERK <b>X</b>					TOTAL NO. OF PAGES		ON (DATE)	





## DOCKET - OFFENSES

DEFENDANT NAME  
Brian M BubanasDOCKET NUMBER  
1108CR001011

POSSESS TO DISTRIB CLASS A c94C §32(a)

DISPOSITION DATE AND JUDGE

6-12-12 Bernatky

## DISPOSITION METHOD

☐ Guilty Plea or ☐ Admission to Sufficient Facts  
accepted after colloquy and 278 §29D warning  
(trial)

Trial

Dismissed upon:

- ☐ Request of Commonwealth ☐ Request of Victim  
☐ Request of Defendant ☐ Failure to prosecute

Other:

- ☐ Filed with Defendant's consent  
☐ Nolle Prosequi  
☐ Decriminalized (277 §70 C)

FINE/ASSESSMENT

SURFINE

COSTS

OUI §24D FEE

OUI VICTIMS ASMT

HEAD INJURY ASMT

RESTITUTION

VW ASSESSMENT

BATTERER'S FEE

OTHER

## SENTENCE OR OTHER DISPOSITION

- ☐ Sufficient facts found but continued without a finding until:  
☐ Defendant placed on probation until:

☐ Risk/Need or OUI ☐ Administrative Supervision

- ☐ Defendant placed on pretrial probation (276 §87) until:  
☐ To be dismissed if court costs / restitution paid by:

2 yrs H.C.  
 Concurrent w/sentence  
 serving  
 (146 days credit time served)

## FINDING

- ☒ Guilty ☐ Not Guilty  
☐ Responsible ☐ Not Responsible  
☐ Probable Cause ☐ No Probable Cause

## FINAL DISPOSITION

- ☐ Dismissed on recommendation of Probation Dept.  
☐ Probation terminated: defendant discharged  
☐ Sentence or disposition revoked (see cont'd page)

JUDGE

DATE

## COUNT / OFFENSE

2 DRUG VIOLATION NEAR SCHOOL/PARK c94C §32J

DISPOSITION DATE AND JUDGE

6-12-12

" 7

## DISPOSITION METHOD

☐ Guilty Plea or ☐ Admission to Sufficient Facts  
accepted after colloquy and 278 §29D warning
☐ Bench Trial☐ Jury Trial☒ Dismissed upon:

- ☒ Request of Commonwealth ☐ Request of Victim  
☐ Request of Defendant ☐ Failure to prosecute

Other:

- ☐ Filed with Defendant's consent  
☐ Nolle Prosequi  
☐ Decriminalized (277 §70 C)

FINE/ASSESSMENT

SURFINE

COSTS

OUI §24D FEE

OUI VICTIMS ASMT

HEAD INJURY ASMT

RESTITUTION

VW ASSESSMENT

BATTERER'S FEE

OTHER

## SENTENCE OR OTHER DISPOSITION

- ☐ Sufficient facts found but continued without a finding until:  
☐ Defendant placed on probation until:

☐ Risk/Need or OUI ☐ Administrative Supervision

- ☐ Defendant placed on pretrial probation (276 §87) until:  
☐ To be dismissed if court costs / restitution paid by:

## FINDING

- ☐ Guilty ☐ Not Guilty  
☐ Responsible ☐ Not Responsible  
☐ Probable Cause ☐ No Probable Cause

## FINAL DISPOSITION

- ☐ Dismissed on recommendation of Probation Dept.  
☐ Probation terminated: defendant discharged  
☐ Sentence or disposition revoked (see cont'd page)

JUDGE

DATE

## COUNT / OFFENSE

DISPOSITION DATE AND JUDGE

## DISPOSITION METHOD

☐ Guilty Plea or ☐ Admission to Sufficient Facts  
accepted after colloquy and 278 §29D warning
☐ Bench Trial☐ Jury Trial☐ Dismissed upon:

- ☐ Request of Commonwealth ☐ Request of Victim  
☐ Request of Defendant ☐ Failure to prosecute

Other:

- ☐ Filed with Defendant's consent  
☐ Nolle Prosequi  
☐ Decriminalized (277 §70 C)

FINE/ASSESSMENT

SURFINE

COSTS

OUI §24D FEE

OUI VICTIMS ASMT

HEAD INJURY ASMT

RESTITUTION

VW ASSESSMENT

BATTERER'S FEE

OTHER

## SENTENCE OR OTHER DISPOSITION

- ☐ Sufficient facts found but continued without a finding until:  
☐ Defendant placed on probation until:

☐ Risk/Need or OUI ☐ Administrative Supervision

- ☐ Defendant placed on pretrial probation (276 §87) until:  
☐ To be dismissed if court costs / restitution paid by:

## FINDING

- ☐ Guilty ☐ Not Guilty  
☐ Responsible ☐ Not Responsible  
☐ Probable Cause ☐ No Probable Cause

## FINAL DISPOSITION

- ☐ Dismissed on recommendation of Probation Dept.  
☐ Probation terminated: defendant discharged  
☐ Sentence or disposition revoked (see cont'd page)

JUDGE

DATE





CRIMINAL DOCKET DOCKET ENTRIES		DEFENDANT NAME Brian M Bubanas	DOCKET NUMBER 1108CR001011
DATE	DOCKET ENTRIES		
10/6/11	Mitt \$1,011 Pet 11/18/11		
11/18/11	Donnelly Bail reduced to Personal. Condition of Release: Enter and Complete the Wyman Reentry Program. Cont to 12-9-12 for Status. (MMP)		
1/9/12	Donnelly motion filed 6/23/12		
1-30-12	Bail revoked J. Donnelly		
2-14-12	Out of Court Compliance 3-12-12		
2-19-12	Writ of Habeas Corpus Petition HC Rt 3-12-12 J. Donnelly		
3-2-12	Def in Custody - Warrant Recalled (ra)		
3-2-12	Bernstein Bail revoked to 4-27/12. Issue mitt for \$1,011 cash return 4/2/12 Issue mitt bail revoked to 4-2-12. (MMP)		
4/2/12	(10:32:35-10:51:06) (MMP)		
4/2/12	Bernstein J. James H. Roche - mitt \$1,001 CASH Pet 6/12/12		
4/2/12	- Habeas to SC HC Pet 6/12/12		
11	mitt in lieu of Bail issued - R-K-S		
11	Habeas Corpus for Prosecution issued - R-K-S		
6-12-12	alien warning given		
6-12-12	Motion for forfeiture of \$368 bond issued by Dept of Bernstein		
10-12-12	mitt issued p/w		

## APPROVED ABBREVIATIONS

ARR = Arraignment PTH = Pretrial hearing DCE = Discovery compliance & jury selection BTR = Bench trial JTR = Jury trial PCH = Probable cause hearing MOT = Motion hearing SRE = Status review  
 SRP = Status review of payments FAT = First appearance in jury session SEN = Sentencing CWF = Continuance-without-finding scheduled to terminate PRO = Probation scheduled to terminate  
 DFTA = Defendant failed to appear & was defaulted WAR = Warrant issued WARD = Default warrant issued WR = Warrant or default warrant recalled PVH = probation revocation hearing.

Date/Time Printed: 09/12/2011 09:12:44



1108CR001011

Version 2.0 - 11/05/

6/14/12 Defendants motion to Reuse + Revoke Filed Smith/Lev

ET NO.  
1108CRDDOCKET  
CONTINUATION

NAME OF CASE

Comm. vs. Brian Buback

DOCKET NUMBER

1108CR 1011

NO.

DATE

## DOCKET ENTRIES

2-7-13

Cont'd to 2-27-13 M- Withdraw Plea  
w/ Hilda Cargan. Decker st  
Jan. at 2-27-13 J. Dimally

2-7-13

Depth motion to Withdraw Plea, stay  
Execution of Sentence & For Post-Conviction  
Discovery.

Attorney's Affidavit

And Clerk



<b>TENDER OF PLEA OR ADMISSION &amp; WAIVER OF RIGHTS</b>		DOCKET NO. <b>11-1011</b>		Trial Court of Massachusetts District Court Department	
NAME OF DEFENDANT <b>Brian Bubanas</b>				COURT DIVISION <b>Boston Municipal Court Brighton Division 52 Academy Hill Rd. Brighton, MA 02135</b>	
SECTION I <span style="float: right;">CONDITIONAL TENDER OF PLEA OR ADMISSION</span>					
Defendant tenders the following: <input checked="" type="checkbox"/> <b>PLEA OF GUILTY</b> <input type="checkbox"/> <b>ADMISSION TO FACTS SUFFICIENT FOR A FINDING OF GUILTY</b>					
COUNT NO.	DEFENDANT'S RECOMMENDATION(s) <small>(Include all fees, costs and conditions of probation)</small>	PROSECUTOR'S RECOMMENDATION(s) <small>(Required when Prosecutor disagrees with Defendant's recommendations)</small>	JUDGE'S DISPOSITION WHEN DEFENDANT'S RECOMMENDATION IS REJECTED		
1	G - 2 yr SCHC committed, 146 days credit, all fees waived concurrent w/ current sentence	agreed			
2	DISM				
<p style="color: red;">A true copy. Attorney</p> <p style="color: red;">Asst. Clerk</p>					
<p><b>IF ANY COUNT IS BEING PLACED ON FILE:</b> it may be removed from the file at any time and sentence imposed (or scheduled for trial if no guilty finding has been made): (1) at the defendant's request, or (2) if a related conviction or sentence is reversed or vacated, or (3) if it is shown by a preponderance of evidence that the defendant committed a new criminal offense, or (4) if it is shown by a preponderance of evidence that:</p>					
<p>(Optional:) The prosecutor may not request that the charge be removed from the file after: _____ (date).</p>					
DIST. / MUN. CTS. R. CRIM. P. 4(c) REQUIRES COUNSEL TO CONSULT WITH THE PROBATION DEPARTMENT REGARDING PROBATIONARY TERMS.					
SIGNATURE OF DEFENSE COUNSEL OR PRO SE DEFENDANT		DATE	SIGNATURE OF PROSECUTOR		DATE
X		6/12/12	X		6/12/12
THE COURT <input checked="" type="checkbox"/> <b>ACCEPTS DEFENDANT'S TENDER</b> <input type="checkbox"/> <b>REJECTS DEFENDANT'S TENDER</b>					DATE
SIGNATURE OF JUDGE					DATE
X					6/12/12
DEFENDANT'S DECISION WHEN COURT REJECTS DEFENDANT'S RECOMMENDATION					
<input type="checkbox"/> Defendant WITHDRAWS the tendered plea or admission. <input type="checkbox"/> Defendant ACCEPTS judge's disposition set forth above.					
SIGNATURE OF DEFENSE COUNSEL		DATE	SIGNATURE OF DEFENDANT		DATE
X			X		



**SECTION II DEFENDANT'S WAIVER OF RIGHTS (G.L. c. 263, § 6) & ALIEN RIGHTS NOTICE (G.L. c. 278, § 29D)**

I am not now under the influence of any drug, medication, liquor or other substance that would interfere with my ability to fully understand the constitutional and statutory rights that I am waiving when I plead guilty, or admit to sufficient facts to support a finding of guilty.

I have decided to plead guilty, or admit to sufficient facts, freely and voluntarily upon the conditions which I have tendered in Section I. My guilty plea or admission is not the result of force or threats, promises or other assurances.

I understand and acknowledge that I am voluntarily giving up the right to be tried by a jury, or by a judge without a jury, on these charges. I understand that the jury would consist of six jurors chosen at random from the community, and that I could participate in selecting those jurors, who would determine unanimously whether I was guilty or not guilty. I understand that by entering my plea of guilty or admission, I will also be giving up my right to confront, cross-examine, and compel the attendance of witnesses; to present evidence in my defense; to remain silent and refuse to testify or provide evidence against myself, all with the assistance of a defense attorney; and to be presumed innocent until proven guilty by the prosecution beyond a reasonable doubt.

I am aware of the nature and elements of the charge(s) to which I am entering my guilty plea or admission. I am also aware of the nature and range of the possible sentence(s); I am aware that sentences can be imposed one after the other. I have been advised if my plea of guilty or admission to the charges could trigger the provisions of the sex offender registration statute, or lifetime community parole supervision, or commitment as a sexually dangerous person under G.L. c. 123A, § 12.

I understand that if I am not a citizen of the United States, the acceptance by this court of my plea of guilty, plea of nolo contendere, or admission to sufficient facts may have consequences of deportation, exclusion from admission to the United States, or denial of naturalization, pursuant to the laws of the United States.

*If any charge is being placed on file:* I freely and voluntarily consent to the filing of that charge on the conditions listed on the front of this form. I understand that I have a right at any time to have the court remove it from the file and impose sentence (or schedule it for trial if no guilty finding has been made). I understand that the prosecutor may request the court to remove it from the file and impose sentence (or schedule it for trial if no guilty finding has been made) if a related conviction or sentence is reversed or vacated, or if the prosecutor proves by a preponderance of evidence either that I committed a new criminal offense or that any other condition listed on this front of this form has occurred. The prosecutor may do so at any time (or if a time limit is listed on the front of this form, at any time until that date). I understand that if the charge is removed from the file and I am sentenced, it may result in additional punishment in this case.

SIGNATURE OF DEFENDANT

X *[Signature]*

DATE

6/12/12

I have translated this document for the defendant.  
SIGNATURE OF INTERPRETER

X

**SECTION III DEFENSE COUNSEL'S CERTIFICATE (G.L. c. 218, § 26A)**

As required by G.L. c. 218, § 26A, I certify that as legal counsel to the defendant in this case, I have explained to the defendant the legal rights and consequences referred to in Section II above.

SIGNATURE OF DEFENSE COUNSEL

X *[Signature]*

BBO NO.

665236

DATE

6/12/12

**SECTION IV JUDGE'S CERTIFICATION**

I, the undersigned Judge of the District Court, addressed the defendant directly in open court. I made appropriate inquiry into the education and background of the defendant and am satisfied that the defendant fully understands all of the defendant's rights as set forth in Section II above, and that the defendant is not under the influence of any drug, medication, liquor or other substance that would impair the defendant's ability to fully understand those rights. I find, after a colloquy with the defendant, that the defendant has knowingly, intelligently and voluntarily waived all of the rights as explained during these proceedings and as set forth in this form.

After a hearing, I have found a factual basis for the charge(s) to which the defendant is pleading guilty or admitting and I have found that the facts as related by the prosecution and admitted by the defendant would support a conviction on the charge(s) to which the plea or admission is made.

I certify that I have advised the defendant as follows: "If you are not a citizen of the United States, you are hereby advised that the acceptance by this court of your plea of guilty, plea of nolo contendere, or admission to sufficient facts may have consequences of deportation, exclusion from admission to the United States, or denial of naturalization, pursuant to the laws of the United States."

*If any charge is being placed on file after a guilty finding:* I have informed the defendant that he or she has a right to be sentenced on that charge at any time; that (subject to any listed time limit) the prosecutor may request the court to remove it from the file and impose sentence if a related conviction or sentence is reversed or vacated, or if the prosecutor proves by a preponderance of evidence either that the defendant committed a new offense or that any other condition listed on this front of this form has occurred; and that if the charge is removed from the file and sentence imposed it may result in additional punishment in this case.

SIGNATURE OF JUDGE

X *[Signature]*

DATE

6/12/12



**COMMONWEALTH OF MASSACHUSETTS  
BOSTON MUNICIPAL COURT DEPT. OF THE TRIAL COURT**

Suffolk, SS.

Brighton Division

COMMONWEALTH

v.

DOCKET NO. 1108CR1011

BRIAN BUBANAS

**DPH LAB CASE**

**DEFENDANT'S MOTION TO WITHDRAW GUILTY PLEA**

**NOW COMES** the defendant, Brian Bubanas, in the above captioned matter and respectfully requests pursuant to Mass. R. Crim. P. Rule 30 that this court allow him to withdraw his guilty plea, and order that this matter be restored to the trial list. Mr. Bubanas states as his grounds the following:

1. Mr. Bubanas tendered a change of plea to the Complaint charging him with Possession with Intent to Distribute a Class A controlled substance on June 12, 2012, and was sentenced to a two year commitment in the Suffolk County House of Correction.
2. Chemist Annie Dookhan, a former employee of the DPH Drug Lab which exclusively tested drug samples for Suffolk County cases, has been identified by law enforcement officials as a person who intentionally contaminated drug evidence to ensure positive tests, inflated drug sample weights, falsified drug analysis findings, and fraudulently altered chain of custody documents during a time period relevant to this case.
3. As a consequence of that investigation, two other laboratory supervisors have been suspended, and the DPH drug laboratory in Jamaica Plain has been shut down.
4. If implicated, as a result of Ms. Dookhan's conduct, the Defendant's guilty plea could not be deemed as knowing and voluntary, and would therefore be in violation of the Sixth and Fourteenth Amendments and Article 12.
5. As a result of the misconduct of Ms. Dookhan and/or other employees of the lab, which is imputed to the Commonwealth, the defendant was deprived of due process by the failure of the Commonwealth to provide true and accurate discovery prior to his guilty plea, in violation of Fourteenth Amendment and Article 14. See Brady v. Maryland, 373 U.S. 83 (1963).
6. The misconduct of Ms. Dookhan constitutes newly discovered exculpatory evidence.

7. As of this writing, the Commonwealth has been unable to produce the drug certification in connection with this case, which may directly or indirectly implicate chemist Annie Dookhan's involvement in this matter.
8. By filing this motion at this time based on the urgency of this newly-discovered evidence, Mr. Bubanas does not intend to waive any other claims.
9. An affidavit of counsel is attached herewith in support of this motion and is incorporated by reference.

**WHEREFORE** Mr. Bubanas respectfully requests that the court allow him to withdraw his guilty plea; and further that the court allow the defendant to supplement this motion with additional material uncovered by any further investigation of the drug lab, and any new discovery received from the Commonwealth.

Respectfully submitted,  
The Defendant, through counsel,

---

Dmitry Lev, Esq.  
BBO # 665236  
Law Offices of D. Lev, PC  
419 Mount Auburn St.  
Watertown, MA 02472  
(617) 556-9990 tel  
(617) 830-0005 fax  
dlev@levlaw.net

Dated: January 29, 2013

**COMMONWEALTH OF MASSACHUSETTS  
BOSTON MUNICIPAL COURT DEPT. OF THE TRIAL COURT**

Suffolk, SS.

Brighton Division

COMMONWEALTH

v.

DOCKET NO. 1108CR1011

BRIAN BUBANAS

**DPH LAB CASE**

**AFFIDAVIT IN SUPPORT OF DEFENDANT'S MOTION TO WITHDRAW  
GUILTY PLEA**

I, Dmitry Lev, counsel for the Defendant in the above captioned matter, upon oath hereby swear and depose as follows:

1. I am the attorney for the Defendant in the above captioned matter.
2. I counseled the Defendant with respect to the plea tendered in this matter.
3. I do not have the Drug Cert for this matter in my file, and I do not believe that a copy had been provided to me by the Commonwealth.
4. The Commonwealth has publicly acknowledged in the media, as well as in open court in other cases, that Annie Dookhan has been fired and is currently under indictment for serious improprieties at the lab, including inflating drug weights, contaminating drug samples to ensure positive results, and falsifying drug analysis findings.
5. She has broken the chain of custody for the Commonwealth's drug evidence in a number of pending and closed cases.
6. Her drug analysis certifications are rendered suspect in that she has been accused by law enforcement officials of falsifying the weight and content of samples.
7. Analysis of drugs performed in any laboratory in which she worked is suspect, considering her position as chemist in charge of quality assurance.
8. At the time to the Defendant's plea, this information had not yet been uncovered and was unknown to the Defendant and counsel.
9. As of this writing, the Commonwealth has been unable to produce the drug certification in connection with this case, which may directly or indirectly implicate chemist Annie Dookhan's involvement in this matter.

Signed under the pains and penalties of perjury this 29<sup>th</sup> day of January, 2013.

Respectfully submitted,

---

Dmitry Lev, Esq.  
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(617) 556-9990 tel  
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**COMMONWEALTH OF MASSACHUSETTS  
BOSTON MUNICIPAL COURT DEPT. OF THE TRIAL COURT**

Suffolk, SS.

Brighton Division

COMMONWEALTH

v.

BRIAN BUBANAS

DOCKET NO. 1108CR1011

**DPH LAB CASE**

**CERTIFICATE OF SERVICE**

I, Dmitry Lev, hereby certify that the foregoing documents were this day served upon the District Attorney's Office via courier at the address below:

Suffolk County District Attorney's Office  
Attn: Luke Goldworm  
52 Academy Hill Rd.  
Brighton, MA 02135

Respectfully submitted,

---

Dmitry Lev, Esq.  
BBO # 665236  
Law Offices of D. Lev, PC  
419 Mount Auburn St.  
Watertown, MA 02472  
(617) 556-9990 tel  
(617) 830-0005 fax  
dlev@levlaw.net

Dated: January 29, 2013



Edward F Davis, Police Commissioner

### INCIDENT SUMMARY REPORT - DEPARTMENT USE ONLY

#### GENERAL INFORMATION

COMPLAINT NO.	DISPATCH DATE/TIME	CLEARANCE DIST.	FINAL INCIDENT DESCRIPTION	STATUS
110488606	09/09/2011 05:15 PM	D14	DRUGS - POSS. CLASS A - INTENT TO MFR DIST DISP	Cleared By Arrest
SUPP.NOS	DATE/TIME OF OCCURRENCE	DISTRICT	LOCATION	INCIDENT DESCRIPTION
0	09/09/2011 05:17 PM	D14	153 FOSTER ST	SEARCH WARRANT
1	01/07/2012 06:00 PM	D14	153 FOSTER ST	DRUGS - POSS. CLASS A - INTENT TO MFR DIST DISP
2	02/08/2012 10:40 AM	D14	0 BLUE HILL AV/CALLENDER ST	DRUGS - POSS. CLASS A - INTENT TO MFR DIST DISP

#### OFFICER INFORMATION

SUPP.NOS	UNIT ASSIGNED	SHIFT	REPORTING OFFICER	REPORTING OFFICER ID	PARTNER ID	APPROVING SUPERVISOR	APPROVING SUPERVISOR ID
0	VD137	3	MICHAEL A BROWN	95175	10191	ALTON R HOOD	8721
1	VD137	3	MICHAEL A BROWN	95175	11517	SHAWN M BURNS	80412
2	CK02D	2	Justin Wood	103551	103761	JOHN F. PUGLIA	11385

#### PERSON INFORMATION

##### VICTIM

SUPP.NOS	NAME	ADDRESS	GENDER	RACE	DOB	SSN
0	COMM OF MASS					
1	COMM OF MASS					

##### REPORTER

SUPP.NOS	NAME	ADDRESS	GENDER	RACE	DOB	SSN
2	PO WOOD/HEGGIE	1165 BLUE HILL AV DORCHESTER MA 02124-0000				

##### WITNESS

SUPP.NOS	NAME	ADDRESS	GENDER	RACE	DOB	SSN
0	S/D WAGGETT, DET CONLEY, PO NUNEZ, YOUNG, BOYLE	301 WASHINGTON ST BRIGHTON MA 02135-0000				
1	DETECTIVE KENNETH CONLEY	301 WASHINGTON ST BRIGHTON MA 02135-0000				

##### OFFENDER

SUPP.NOS	STATUS	NAME	ADDRESS	RACE	DOB	SSN	BOOKING NO.
0	ARRESTED	BUBANAS, BRIAN M	153 FOSTER ST BRIGHTON MA 00000-0000	WHITE NON-HISPANIC	02/13/1985	013-66-1387	20110050314
2	ARRESTED	BUBANAS, BRIAN M	0 HOMELESS HOMELESS MA 00000-0000	WHITE NON-HISPANIC	02/13/1985	013-66-1387	20120018203

#### PROPERTY INFORMATION

SUPP.NOS	STATUS	TYPE	SERIAL NO.	DESCRIPTION	MODEL	VALUE
0	TURNED IN AS EVIDENCE	PERSONAL PAPERS		BLUE MASS HEALTH CARD	BAY STATE ACCESS	\$0.00
0	TURNED IN AS EVIDENCE	DRUG / NARCOTICS		(3) ROUND WHITE PILLS	PILLS - UNIDENTIFIED	\$0.00
0	TURNED IN AS EVIDENCE	DRUG / NARCOTICS		(9) WHITE CAPSULE SHAPED	CAPSULES- UNIDENTIFI	\$0.00
0	TURNED IN AS EVIDENCE	DRUG / NARCOTICS		(6) P/B'S TAN POWDER - PLASTIC CYLINDER	HEROIN	\$0.00
0	TURNED IN AS EVIDENCE	DRUG / NARCOTICS EQUIPMENT		PILL BOTTLE - CONTAINING EMPTY BAGGIES	PILL BOTTLE	\$0.00
0	TURNED IN AS EVIDENCE	MONEY		\$369.00 USC	USC	\$0.00
0	TURNED IN AS EVIDENCE	PERSONAL PAPERS		PERSONAL PAPERS - BRIAN BUBANUS		\$0.00
0	TURNED IN AS EVIDENCE	DRUG / NARCOTICS EQUIPMENT		DRUG LEDGER	DRUG LEDGER	\$0.00

#### NARRATIVE INFORMATION

NARRATIVE FOR ORIGINAL REPORT WRITTEN 09/09/2011 07:35 PM: About 1717 hours on 09/09/11 members of the D14 Drug Control Unit (Det Conley, PO Nunez, PO Boyle, PO Young, PO Brown PO Rockwell) under the direct supervision of Sgt Det Waggett did execute Brighton District Court Search Warrant # 1108SW290 at 153 Foster St - basement apartment., Brighton, MA.

Officers knocked and announced their presence before making entry using the rear basement door. Apartment was secured by members of the D14 DCU . Officers found the apartment occupied by Michael Khmyrov 11/22/85. Officers secured Khmyrov who was FIO'd on scene.

Adam D'Agostino 2/25/83 came down from the first floor apartment and was secured and FIO'd.

Target of the investigation, Brian Bubanus 02/13/85 was transported to the location by P.O. Rockwell. Bubanus was read his Miranda Rights by P.O. Brown, to which he stated that he clearly understood them. Post Miranda, Bubanus stated that "there's nothing in there." Officers found the apartment to be separated by a wall and a locked door, sectioning the living space of Brian Bubanus and the living space of Michael Khmyrov. Bubanus claimed the side of the apartment where Officers found the following evidence.

- 1 Bay State Access card - in the name of Brian Bubanus - Det Conley
  - 2.(3) three round white pills - no marking - night stand - S/D Waggett
  - 3.(9) nine white capsule shaped pills - night stand - S/D Waggett
  - 4.(6) p/b's tan powder in plastic cylinder -believed to be heroin - above ceiling tiles- Det Conley
  - 5.pill bottle containing empty plastic bags- in the name of Wayne Nigro - bureau - S/D Waggett
  - 6.\$ 369.00 USC - jeans pocket in bureau- S/D Waggett
  7. personal papers - in the name of Brian Bubanus - night stand - PO Brown
  8. Drug Ledger - dresser drawer - PO Brown
- Evidence photographed on scene by Detective Conley.

Bubanus transported to D14 and booked in the usual manner. Bubanus to be charged with Possession with Intent Class, "A" (Heroin) Drugs, and Possession with Intent Class, "A" (Heroin) Drugs - School Zone. Location of 153 Foster St., Brighton is within 1000ft of the Edison School on 60 Glenmont Rd. Drugs logged into D14 Drug Control Logbook # 19 pg # 114. Drugs deposited in D14 drug safe. \$ 369.00 USC seized from suspect, Brian Bubanus pursuant to C94c-47. Seized money form completed, money to be deposited in Headquarters money safe.

NARRATIVE FOR SUPPLEMENT NUMBER 1 WRITTEN 01/07/2012 10:48 PM: On Saturday, January 07, 2012, Detective Conley and PO Brown assigned to the Area D14 Drug Control Unit under the supervision of Sgt Detective Waggett conducted a school zone measurement of (483') four hundred eighty three feet from the driveway of 153 Foster St. to the outer boundaries of the Edison School located at 60 Glenmont Rd., Brighton, MA. The measurement was conducted using a calibrated Measure Master measuring wheel by Roller Tape, Model # MM-30.

NARRATIVE FOR SUPPLEMENT NUMBER 2 WRITTEN 02/08/2012 12:27 PM: About 10:40 AM on Wednesday, 2/8/2012, Officer Wood and Heggie assigned to the CK02D unit responded made an on site warrant arrest at Blue Hill Av and Callender St, Dorchester.

The suspect (Bubanas, Brain) was placed under arrest by virtue of a default warrant issued out of Brighton District Court by Judge Donnelly on 1/30/2012. The warrant was issued for possession with intent to distribute class A, drug violation near school/park . Docket # 1108CR001011.

Suspect was transported to B3 and booked. The warrant unit notified.



DEVAL L. PATRICK  
GOVERNOR

TIMOTHY P. MURRAY  
LIEUTENANT GOVERNOR

ANDREA J. CABRAL  
SECRETARY

COLONEL TIMOTHY P. ALBEN  
SUPERINTENDENT

*The Commonwealth of Massachusetts*  
*Department of State Police*  
*Forensic Services Group*

59 Horse Pond Road

Fudbury, MA 01776

Voice: (508) 358-3100 Fax: (508) 358-3111

## Case Jacket for 12-151453

<b>Lab Code / Case</b>	12-151453	<b>Department Name</b>	Boston Police Department
<b>Offense Location</b>	BOSTON	<b>Department Case</b>	110488606
<b>Case Type</b>	Drug/Narcotic Violation	<b>Case Officer</b>	Sergeant Detective Waggett #8639
<b>Offense Date</b>	9/9/2011	<b>References</b>	110488606 12-151453 B11-10616 B11-10616 B11-10617 B11-10618

### Case Names

<u>Name Type</u>	<u>Last Name</u>	<u>First Name</u>	<u>Middle Name</u>	<u>Sex</u>	<u>Race</u>	<u>SS#</u>	<u>DOB</u>
S	Bubanks	Brian					

### Submissions

<u>Sub #</u>	<u>Date</u>	<u>Submitted By</u>	<u>Type</u>	<u>Comments</u>
1	9/14/2011	Diana Lopez	Converted Evidence Submi:	
2	10/7/2012	Bruce W. Cranstoun	Walk-in or Hand Delivered	

### Items

<u>Sub #</u>	<u>Lab Item No.</u>	<u>Cont.</u>	<u>Description</u>	<u>Packaging</u>	<u>Custody Location on Date Printed</u>
2	1-1	A	Drug Sample(s) from Jamaica Plain Lab substance	ITMTAG	DRUG CRATE199
2	1-2	A	Drug Sample(s) from Jamaica Plain Lab capsule	ITMTAG	DRUG CRATE199
2	1-3	A	Drug Sample(s) from Jamaica Plain Lab tablet	ITMTAG	DRUG CRATE199
2	FileDrug		Drug File Folder	FILE	DRFI DRUG003



**Open Assignments**

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<u>Seq#</u>	<u>Section</u>	<u>Section Date</u>	<u>Analyst</u>	<u>Analyst Date</u>	<u>Priority</u>	<u>Status</u>	<u>Comments</u>
2	DRUG	10/9/2012			2	0	
1	JPCV	9/14/2011			2	0	

**Approved Reports**

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<u>Rpt #</u>	<u>Section</u>	<u>Analyst</u> <u>Assigned</u>	<u>Date</u> <u>Assigned</u>	<u>Analyst</u> <u>Date</u>	<u>Date</u> <u>Completed</u>	<u>Turn</u> <u>Around</u>	<u>Priority</u>	<u>Comments</u>
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## Chain of Custody Report

**Lab Case Number** 12-151453  
**Location:** BOSTON  
**Department Name:** Boston Police Department  
**Dept. Case Number** 110488606

1-1 ITMTAG: Drug Sample(s) from Jamaica Plain Lab - substance

<u>Date</u>	<u>Time</u>	<u>Custody Of</u>	<u>Location / Person</u>
9/14/2011		JP Conversion Locations	Safe
10/7/2012	16:53	LIMS User	Bruce W. Cranstoun
10/7/2012	16:53	LIMS User	Bruce W. Cranstoun
10/7/2012	17:25	JP Conversion Locations	J.P. Drug Lab Vault (Ready for Transport)
10/9/2012	12:44	LIMS User	Bruce W. Cranstoun
With the assistance of Troopers of the MSP Narcotics Inspection Unit			
10/9/2012	15:18	Drug Evidence Storage	Drug Storage Crate 199

1-2 ITMTAG: Drug Sample(s) from Jamaica Plain Lab - capsule

<u>Date</u>	<u>Time</u>	<u>Custody Of</u>	<u>Location / Person</u>
9/14/2011		JP Conversion Locations	Safe
10/7/2012	16:53	LIMS User	Bruce W. Cranstoun
10/7/2012	16:53	LIMS User	Bruce W. Cranstoun
10/7/2012	17:25	JP Conversion Locations	J.P. Drug Lab Vault (Ready for Transport)
10/9/2012	12:44	LIMS User	Bruce W. Cranstoun
With the assistance of Troopers of the MSP Narcotics Inspection Unit			
10/9/2012	15:18	Drug Evidence Storage	Drug Storage Crate 199

1-3 ITMTAG: Drug Sample(s) from Jamaica Plain Lab - tablet

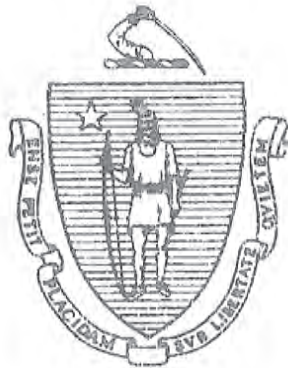
<u>Date</u>	<u>Time</u>	<u>Custody Of</u>	<u>Location / Person</u>
9/14/2011		JP Conversion Locations	Safe
10/7/2012	16:53	LIMS User	Bruce W. Cranstoun
10/7/2012	16:53	LIMS User	Bruce W. Cranstoun
10/7/2012	17:25	JP Conversion Locations	J.P. Drug Lab Vault (Ready for Transport)
10/9/2012	12:44	LIMS User	Bruce W. Cranstoun
With the assistance of Troopers of the MSP Narcotics Inspection Unit			



# B11-08000– B11- 12000

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF PUBLIC HEALTH

DRUG ANALYSIS LABORATORY



LOG BOOK

Sample Number B11-08000 – B11-12000

	B11-08000			
BP 11-16 NEM	B11-10602	NEM		
↓	B11-10603	NEM		
Q1092410CS	B11-10604	PS		10.48
↓	B11-10605	PS		↓
8.6.14.12 Psp	B11-10606	P. Piru		7.19.12 8
↓	B11-10607	↓		↓
Q1012-171 HHL	B11-10608	mem		Q1012-2871
↓	B11-10609	mem		↓
Q102-2871 HLL	B11-10610	HLL		Q103-1512
Q1011-1871 HLL	B11-10611	HLL		
	B11-10612			
	B11-10613			
Q103-1612 PIR	B11-10614	DJR		Q103-2012
↓	B11-10615	DJR		↓
	B11-10616			
	B11-10617			
	B11-10618			
Q1016-2012 PIR	B11-10619		mem	Q1017-1912
8.1.12 WLO	B11-10620	XAG		Q101-31-12
Q1011-11 HHL	B11-10621	mem		Q1012-2871
↓	B11-10622	mem		↓
	B11-10623			
	B11-10624			
	B11-10625			
	B11-10626			